IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15732 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMAD IRFAN YUNUSBHAI NURANI (MEMON)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15732 of 2004

MR MA BUKHARI for Petitioner

MS HANSA B.PUNANI, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 27/12/2004

ORAL JUDGEMENT

Heard Mr.M.A.Bukhari, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP,

appearing on behalf of the respondents.

2. The present petition is filed under Article 226 read with Articles 14, 19 and 21 of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 04th June, 2004, passed by the Police Commissioner, Ahmedabad City, under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner is branded as a "dangerous person" within the meaning of Section 2(c) of the Act.

3. While passing the order of detention, the Detaining Authority and the Police Commissioner of City of Ahmedabad, has considered the fact of involvement of present petitioner in five different offences by three different police stations of City of Ahmedabad. On all five occasions, the petitioner has been found involved in in the offences punishable under Sec.379 of the Indian Penal Code, for lifting the motor vehicles (two wheelers parked in open place). It was argued by Mr.Bukhari that, on his arrest on 28th May, 2004, in one of the offences registered by Madhavpura Police Station, he has been falsely implicated. In other four offences, two by Madhavpura Police Station and two by Navrangpura Police Station and Karanj Police Station respectively, without entering into merit of this submission, Mr.Bukhari has concentrated his arguments, while assailing the order on two points, that there was no need to pass order of preventive detention, as the petitioner, on the date of passing the order and execution on it, was in judicial custody, and the same is passed on assumption that can be said to be a conjectures that the petitioner shall be granted bail by competent court, and after coming out of the prison/judicial custody, he was indulged in similar activities i.e. offences of theft of motor vehicles. While developing this argument, Mr.Bukhari has placed reliance on the ratio of the decision of the Apex Court in the case of Amritlal and others Vs. Union Government through Secretary, Ministry of Finance and others reported in AIR 2000 SC 3675 and also the judgment of this Court in Special Civil Application No.8605 of 2004 decided on 20th December, 2004 (Coram: C.K.Buch, J.). The ratio of this decision would squarely help to the case of the petitioner and order of detention can be quashed solely on this ground.

4. It is rightly argued that the ratio of decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and others reported in 2000(3) GLR 2696

would also help the case of the petitioner, because, in present case, the statements of two witnesses recorded by the sponsoring authority on 2nd June, 2004, and the same were verified by the detaining authority on 3rd June, 2004, and the order of detention is of 4th June, 2004. So it is rightly argued that this order can be said to be passed mechanically and under hot haste, otherwise, as the petitioner was in custody, the authority could have passed the order of preventive detention. For short, on the aforesaid aspect, the petition deserves to be allowed.

5. In view of the above, the present petition is allowed. The order of detention dated 04th June, 2004, passed by the respondent No.2 herein is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(C.K.Buch, J.)

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